

LFC Requester:	Sanchez, Scott
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date 1/25/24
Bill No: HB 239

Sponsor: Rep. Martin R. Zamora
Short Title: Cannabis as Prison Contraband

Agency Name and Code AOC
Number: 218
Person Writing Kathleen Sabo
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Conflicts with HB 128 and SB 6, also amending Section 30-22-14 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 239 amends Section 30-22-14 NMSA 1978, governing the felony crime of bringing contraband into places of imprisonment, to include cannabis, cannabis extract and cannabis products within the list of contraband prohibited from being brought knowingly and voluntarily onto the grounds of a place of imprisonment.

HB 239 includes within the definition of “contraband,” cannabis, cannabis extract or cannabis products, but does not include cannabis, cannabis extract or cannabis products if carried into a prison or jail through regular prison or jail channels and pursuant to the direction or prescription of a health care provider. HB 239 also defines “cannabis,” “cannabis extract” and “cannabis product.”

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions, as well as challenges to the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Increased penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

SIGNIFICANT ISSUES

- 1) Section 30-22-14(A) NMSA 1978 provides a third-degree felony penalty for a person convicted of bringing contraband into a prison (the penitentiary of NM or any other institution designated by the Corrections Department for the confinement of adult prisoners), and a fourth-degree penalty for a person convicted of bringing contraband into a jail (county or municipal jail).
- 2) There could be a challenge to the law based on the Section 26-2C-25 NMSA 1978 determination of what is lawful personal use of cannabis. In *People v. Raybon*, 11 Cal.

5th 1056 (2021), the California Supreme Court concluded that possession of cannabis in prison remained unlawful, even after the state's Proposition 64 generally legalized adult possession of up to a specified amount of cannabis, subject to certain exceptions. While the California decision does not set a precedent for New Mexico, a similar outcome regarding the possession of cannabis in prison or a jail could be likely in New Mexico. See <https://cpoa.org/cannabis-in-prison/>.

- 3) Under Section 26-2C-26 NMSA 1978, there is a \$50 penalty for smoking in a public place. Section 26-2C-29 NMSA 1978, prohibiting the possession or distribution of a cannabis product on the premises of a school or daycare center, provides a misdemeanor penalty. Section 26-2C-30 NMSA 1978, governing unlawful possession of cannabis, provides a misdemeanor penalty for a person 21 or older for a person who possesses more than two but not more than eight ounces of cannabis, more than sixteen grams of cannabis extract and more than eight hundred milligrams of edible cannabis. Only when the person possesses more than eight ounces of cannabis, sixty-four grams of cannabis extract or three thousand two hundred milligrams of edible cannabis does the penalty rise to a fourth degree felony. In contrast, HB 239 makes bringing any amount of cannabis, cannabis extract or cannabis product into a prison a third degree felony and into a jail a fourth degree felony.
- 4) The HB 239 amendments increasing penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB 128 and SB 6, also amending Section 30-22-14 NMSA 1978.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS